

SERVED: January 7, 1993

NTSB Order No. EA-3760

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of December, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11025
v.)	
)	
BRENT A. McLARTY,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals from the oral initial decision of Administrative Law Judge Joyce Capps issued in this proceeding on October 23, 1990 at the conclusion of an evidentiary hearing.¹ The incident giving rise to this proceeding occurred on January 12, 1989, when respondent, acting as pilot-in-command of a

¹A copy of the oral initial decision, an excerpt from the transcript, is attached.

passenger-carrying flight under visual flight rules (VFR), was witnessed allegedly operating at a distance from clouds that was less than that permitted by regulation and without prior clearance from air traffic control.

The hearing was limited to the issue of sanction, upon a motion by the Administrator, because the respondent, acting *pro se*, had failed to file an answer to the complaint. The respondent also failed to respond to the Administrator's motion to limit the hearing to the issue of sanction.

The law judge affirmed the order of the Administrator, suspending respondent's commercial pilot certificate for violations of sections 91.9 and 91.105(a) of the Federal Aviation Regulation (FAR), 14 C.F.R. Part 91. The law judge modified the sanction imposed from the proposed 120 days to 60 days, in light of Board precedent in cases where there are no egregious circumstances surrounding the violation. The Administrator did not appeal the reduction in penalty.

Respondent's appeal presents an issue as to whether he was given adequate notice of the need to file an answer to the complaint, and it registers his disagreement with the testimony of the Administrator's percipient witness.²

It was well within the law judge's discretion to limit the hearing to the issue of sanction following the respondent's failure to file an answer disputing the truth of the allegations

²Because the hearing was correctly limited to the issue of sanction, there is no need for us to address any of the factual issues raised by the respondent.

against him. Moreover, the law judge correctly found that the respondent was given sufficient notice of the necessity to file an answer in the letter he received from the Board after the filing of the complaint and in the copy he received of the Administrator's motion. The letter, which contained a copy of the Board's Rules of Practice, stressed the need to promptly file an answer.³ These circumstances establish that respondent was, in fact, fully informed as to how he should proceed in order to protect his certificate interests. His challenge to the law judge's decision will, therefore, be rejected.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the law judge, is affirmed; and
3. The 60-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.⁴

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

³The law judge even noted that, had the respondent called when he received the motion, and asked to file an answer at that point, she would have allowed it.

⁴For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).